APPENDIX A

Opinion Below

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

WILLIS W. RITTER,

Appellee,

vs.

ROGERS C. B. MORTON, Secretary of the Department of the Interior, JOE T. FALLINI, Idaho State Director, Bureau of Land Management, and ORVAL G. HADLEY, Manager, Idaho Land Office, Bureau of Land Management,

Appellants.

[April 4, 1975]

Appeal from the United States District Court
District of Idaho

Before: DUNIWAY and KILKENNY, Circuit Judges, and SWEIGERT,* District Judge.

PER CURIAM:

This case involves the ownership of three islands

*The Honorable William T. Sweigert, Senior United States District Judge for the Northern District of California, sitting by designation.

located in the Snake River in Idaho. The action was brought by appellee, and jurisdiction was claimed under 5 U.S.C. §§ 701-706 (Administrative Procedure Act), 28 U.S.C. §§ 1361 (suit compelling officer to perform duty) and 2201, 2202 (declaratory judgment). After a full presentation of the evidence, the district court found for appellee. We reverse the judgment of the lower court and affirm the decision of the Secretary.

FACTS

Appellee is the owner of "Thousand Springs Farm," which extends for three miles along the east bank of the Snake River in Gooding County, Idaho. His ownership of the land results from a series of conveyances dating from the original government patents. The islands in dispute are in Section 17 of Township 8 South, Range 14 East of the Boise Meridian, and are located in the river immediately south and west of the principal area of appellee's farm.

The United States caused a survey of the township to be made in August and September of 1893. An official plat of the the township, based on the surveyor's field notes, was drawn and approved by the Surveyor General for Idaho in May, 1895. The relevant portion of this plat is shown in Diagram A. In February, 1896, a patent was issued under the Homestead Act to Polina Lewis, a predecessor in interest of appellee. The patent covered ". . . the Southeast Quarter of the Southeast Quarter and the West Half of the Southeast Quarter, and Lots Five and Eight in Section Seventeen, . . . containing 170.40 acres." According to the official plat,

fractional Lots 5 and 8 contained 16.80 and 33.60 acres respectively, with 120 acres in the remainder of the patented area. The lots bordered on the river.

The surveyor's field notes make no mention of the disputed islands which, in fact, were located alongside Lots 5 and 8. The surveyor's description of the river's meander line on the east bank specifically mentions crossing Sand Creek twice, thus apparently remaining east of the islands. The plat shows only a significant bulbous widening of the river where the islands in fact were located. This contrasts sharply with the survey and plat of Section 20 to the south, in which an island is described in the field notes and drawn in the plat. Another contrast is evident with Section 8 to the north, wherein the meander line clearly is shown to be on the west side of an island-like piece of land separated from the adjacent basalt cliffs by a stream created by the flow of Thousand Springs.

The Department of the Interior did not conduct a survey of the disputed islands until 1955. They were then designated Lots 9, 10 and 11 and measured 8.99, 1.29 and 0.84 acres, respectively. A plat based on the 1955 field notes was filed in 1959, the relevant portion of which is contained in Diagram B. The most recent plat, current to September, 1971, shows Lots 5 and 8 still to be 16.80 and 33.60 acres, respectively, as they were in the 1895 plat. The relevant portion of the latest plat is pictured in Diagram C.

In June, 1959, appellee was notified by the Department of the Interior that the previously omitted

islands are, by virtue of the new survey, ". . . public lands of the United States open to entry and selection under the public land laws. . . ." Other material facts follow.

PROCEEDINGS BELOW

When the Department later made known its intention to transfer title in the islands to the State of Idaho, appellee commenced an administrative action under the Color of Title Act, 43 U.S.C. §1068, which action was ultimately denied by the appellant Secretary of the Interior. This action in the district court followed. Appellee asked that the administrative action be reversed or that, alternatively, the appellant officers of the United States be restrained from interfering with his title, use, and possession of the claimed islands.

The district court made, *inter alia*, the following findings of fact:

—"The field notes and survey plat described the western boundary of Lots 5 and 8, Section 17, as the meander line of the Snake River."

—The disputed islands, according to expert testimony, ". . . constitute a flood plain of the Snake River which plain was built during flood stages by the deposit of layer upon layer of silt and very fine sand which are the common sediments that the Snake River has carried."

—"[T]he subject lands once formed a peninsula which was connected with the mainland, now Lots 5

and 8. The subsequent separation of the subject lands from Lots 5 and 8 was due to the flow of Sand Springs Creek and not the action of the Snake River."

—"The channel of the Snake River in 1893 was to the west of the subject lands and the high and low marks of the Snake River are to the west of the subject lands. *The meander line of the Snake River in* 1893, *at the time of the survey of Lots* 5 *and* 8 *was on the west boundary of the subject islands.*" [Emphasis supplied.]

—"There was no gross error or fraud in connection with the survey of 1893."

Among its conclusions of law, the district court held that the action was in the nature of one ". . . to restrain the defendants from interfering with the plaintiff's use and possession of lands patented and lawfully conveyed to him." Accordingly, it concluded that the action was not barred by the doctrine of sovereign immunity and that it had jurisdiction. It found appellee to be the owner of the islands because they ". . . are east of the water course of the Snake River which constitutes the actual boundary of the land conveyed by the patent. . . ." In finding for appellee and enjoining appellants from interference with the appellee's title to the islands, the court found it unnecessary to determine the administrative appeal under the Color of Title Act.

ISSUES ON APPEAL

The questions raised by the parties and presently before this court are:

1. Did the district court err in concluding that this action is not barred by the doctrine of sovereign immunity?

2. Is federal or Idaho law controlling on the boundary determination issue?

3. Did the district court apply the proper rules of law in determining the placement of the boundary and the ownership of the islands?

4. Was the district court clearly erroneous in its factual findings that the disputed islands were east of the Snake River's boundary and meander line?

THE SOVEREIGN IMMUNITY ISSUE

Though under attack in other areas of the law, the doctrine of sovereign immunity is still very much alive in suits involving land title disputes. An uncontested suite against a federal officer which is, in substance, a suit against the United States has traditionally been jurisdictionally barred by sovereign immunity. *Larson v. Domestic & Foreign Corp.*, 337 U.S. 682 (1949). The rule was restated and clarified in *Malone v. Bowdoin*, 369 U.S. 643 (1962), involving a common law ejectment action against an officer of the Forest Service to prevent him from occupying land under claim of title. Citing *Larson*, the Court in *Malone* stated:

> "[T]he action of a federal officer affecting property claimed by a plaintiff can be made the basis of a suit for specific relief against the officer as an individual only if the officer's action is 'not within the officer's statutory powers or, if within those powers, only if the powers, or their exercise

in the particular case, are constitutionally void.'" 369 U.S. at 647.

Here, appellee made affirmative allegations of illegal and unconstitutional conduct by appellant officers. However, the bare allegations cannot lift the jurisdictional bar if the action is, in actuality, one to quiet title against the United States.

We have applied *Malone* in two recent instances, *Andros v. Rupp*, 433 F.2d 70 (CA9 1970), and *Armstrong v. Udall*, 435 F.2d 38 (CA9 1970). *Andros* was an action against a U.S. forest supervisor to restrain him from interfering with plaintiff's use and possession of the land. The distinguishing feature for our purposes here, however, is that record title was stipulated as being vested by patent and mesne conveyances in the plaintiff, not the United States. In our case, there is no such agreement, and in fact, the title ownership is the sole point of dispute. Appellee's reliance on this case is misplaced.

Further clarification comes in *Armstrong v. Udall, supra*, an action to enjoin the Secretary of the Interior from claiming title to property held by plaintiff and originally entered by plaintiff's predecessor, and to require the Secretary to execute patents and titles to the land. Its similarity to the instant case is readily apparent, and we consider the rule it states to be controlling. Unlike *Andros*, the title in *Armstrong* was fully contested and at the center of the dispute. As in our case, the Secretary in *Armstrong* claimed that the plaintiff was occupying public land owned by the United

States and separate from that covered by the patent based on the original survey. We held that it was the task of the district court to determine from the evidence whether the land occupied by plaintiff was a part of the land entered by the claimed patentee and described in the patent originally issued to him. If this were determined adversely to plaintiff, then the apparent title would be in the United States and the action would be one against the United States without its consent and, consequently, jurisdictionally barred by sovereign immunity. *Id.* at 41. We there concluded that the district court should make a factual determination of whether the case was controlled by *Malone* (title in the United States, immunity) or *Andros* (title in plaintiff, no immunity) by deciding wherein apparent title rested.

Armstrong recognizes that in title dispute cases the issue of sovereign immunity and the ultimate merits of a plaintiff's claim are intimately interconnected. For all practical purposes, the former cannot be resolved without determining the latter. In the instant case, we hold, as explained in detail below, that the district court erred in its factual and legal determination that the disputed islands were included within the boundaries of the patent to appellee's predecessor. Accordingly, it also erred in its dependent conclusion that the suit was not barred by sovereign immunity.

THE CHOICE OF LAW ISSUE

Although appellee contends to the contrary, the rule is clear that federal law governs as to the construction of a patent and the quantum of the premises

which it conveys. *Hughes v. Washington*, 389 U.S. 290 (1967); *United States v. Oregon*, 295 U.S. 1 (1935). This rule was stated thusly in *Borax Consolidated, Ltd. v. Los Angeles*, 296 U.S. 10, 22 (1935):

> "The question as to the extent of this federal grant, that is, as to the limit of the land conveyed . . . , is necessarily a federal question. It is a question which concerns the validity and effect of an act done by the United States; it involves the ascertainment of the essential basis of a right asserted under federal law."

See also Bonelli Cattle Co. v. Arizona, 414 U.S. 313, 320-21 (1973); *United States v. Schwarz*, 460 F.2d 1365 (CA7 1972); *United States v. Boyd*, 458 F.2d 1252 (CA6 1972). The same rule applies to a patent granted after statehood is achieved. *United States v. Severson*, 447 F.2d 631 (CA7 1971). Accordingly, Federal—not Idaho—substantive law governs us in determining the boundary issue and the extent of the patent.

THE APPLICABLE RULES OF LAW IN THE BOUNDARY ISSUE

Of great importance in this case is the legal effect to be given to the survey's meander line on the river's east bank. Early decisions held that a meander line is generally not to be used as the strict boundary of a tract, but is to be employed in defining the sinuosities of the banks of the stream and as a means of ascertaining the quantity of land in a fraction for sale and the

amount to be paid. *Whitaker v. McBride*, 197 U.S. 510 (1905); *Railroad Company v. Schurmeir*, 74 U.S. (7 Wall.) 272 (1868); *Thomas B. Bishop Co. v. Santa Barbara County*, 96 F.2d 198 (CA9 1938), *cert. denied* 305 U.S. 623. However, the boundary uses of a meander line in special circumstances were expanded and clarified in *Niles v. Cedar Point Club*, 175 U.S. 300 (1899). That case involved lakefront property and a disputed marsh outside the meander line, but arguably still within the boundary. The Court, while noting that a meander line is ordinarily not strictly a line of boundary, found special circumstances which dictated otherwise. The surveyor had stopped his survey at what he called a "marsh," which was excluded from the official plat. The Court held that while the surveyor may have erred in not extending the survey, ". . . his error does not enlarge the title conveyed by the patents to the surveyed fractional sections." *Id.* at 306. It was clear from the circumstances that the government did not intend to convey any property beyond the meander line.

The "special circumstances" exception was restated in *Producers Oil Co. v. Hanzen*, 238 U.S. 325, 339 (1915):

> "[F]acts and circumstances may be examined and if they affirmatively disclose an intention to limit the grant to actual traverse [meander] lines they must be treated as definite boundaries."[1]

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[1] **See also United States v. 100 Acres of Land, Etc., Marin County, Cal., 468 F.2d 1261, 1264 n.1 (CA9 1972), cert. denied 414 U.S. 822 (1973), stating that ". . . a meander line does not delimit a grant where the land is bordered by water unless special evidence is presented to show an intent to use the meander line as a boundary of the patented land. . . ." [Emphasis in original.]**

Other cases considering the "special circumstances" exception and rejecting it on factual grounds include *United States v. Lane*, 260 U.S. 662 (1923), and *Thomas B. Bishop Co. v. Santa Barbara County, supra.* *Lane*, upon which appellee heavily relies, is readily distinguishable. There, the plat mentioned in the patent represented the lake as the boundary. The Court emphasized that the survey, taken as a whole, with the exception of two large tracts, followed fairly accurately the contour of the lake. It went on to say that the evident purpose of the survey was to include in it all the land to the water's edge. The water's edge in *Lane* included the disputed area. Here, the water's edge excludes the islands. *Lane* thereby favors appellants, rather than appellee.

Additionally, *Lane* mentions certain factors which indicated an intention to include extra land within the boundary. Noting an absence of fraud or palpable mistake, it added that at the time of the survey the land had little value, was in a wild and remote area, and presented difficulties in surveying which would outweigh the expenditure of time and money for a more precise rendition. 260 U.S. at 665.

These factors were reiterated in *Thomas B. Bishop Co. v. Santa Barbara County*, supra, a case involving the seaward projection of a sandspit beyond the survey's meander lines. The previously mentioned factors of relative size, value, terrain difficulty, and the lack of fraud were found to be sufficient to overlook the placement

of the meander line and to include the sandpit within the original patent.

It should be emphasized at this point that these are all merely *factors* to be considered in evaluating the weight to be given to the position of a meander line *vis-a-vis* the boundary. Factual circumstances differ from case to case, and *all* the facts must be first considered individually, and then considered *in their totality.*

We now turn to the leading case of *Scott v. Lattig,* 227 U.S. 229 (1913). Aside from the size of the island and its distance from the bank, *Scott* is almost directly in point. It also involved disputed title to an island in the Snake River. The land had been surveyed in 1868, and the surveyor's field notes and the official plat placed the meander line, as here, on the edge of the fractional sections. However, the island was mentioned in neither the field notes nor the plat. Even though it was the duty of the surveyor in *Scott* to note and locate the island's presence, and even though the evidence showed that it had existed at that time, he failed to do so. The island was clearly outside the meander line and between the fractional lots and the thread of the stream. Nevertheless, ". . . the error in omitting it from the survey did not divest the United States of the title or interpose any obstacle to surveying it at a later time." *Id.* at 241-42. The Court found the island's omission and the fact that it had been fast, dry land at the time of the survey and sufficiently separated from the shore, to be the type of circumstances which would warrant the meander line becoming a strict boundary. We find *Scott v. Lattig*

to be directly applicable to our case, both for its legal statements and for its factual similarity.[2]

Just as in *Scott v. Lattig*, the original surveyor in the instant case was specifically instructed to note the existence of any islands. Manual of Surveying Instructions for the Survey of the Public Lands of the United States and Private Land Claims, p. 34 (1890). Also, the governing statute demanded accuracy, with departure therefrom ". . . no further than such particular circumstances require." U.S. Rev. Stat. § 2395 (1) (2d ed.). Here, there is no evidence or claim of fraud. The record is clear that the islands in dispute did, in fact, exist at the time of the 1893 survey. There is no evidence to the contrary.

In determining boundaries in any land patent case, special weight must be given to the precise description of the land contained in the surveyor's field notes and the official plat, *Jeems Bayou Club v. United States*, 260 U.S. 561, 564 (1923). One of the purposes for accuracy in field surveying and platting of uncharted lands was to assure preciseness in descriptions in land patents.[3] It is undisputed that the 1896 patent was

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[2] The principle enunciated in **Scott v. Lattig** was most recently restated in **Texas v. Louisiana**, 410 U.S. 702, 713 (1973): "Title to islands [in navigable waterways] remains in the United States, unless expressly granted along with the stream bed or otherwise. This was the express holding of **Scott v. Lattig**. . . ." **See also United States v. Severson, supra.**

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[3] The dependence of government land sales on the accuracy of official surveys and plats prepared therefrom is contained in U.S. Rev. State. §2395 (2d ed.), governing the rules of survey, in effect at the time of the 1893 survey.

based on the results of the 1893 survey and the 1895 plat. Accordingly, we must give great weight to the fractional lots' boundary line as revealed in the survey and as shown in the plat.[4]

For the same reason, particular attention must be paid to the precise acreage computation in the plat. In *United States v. Boyd, supra,* at 1254, the plat stated that the premises contained 29.50 acres, and the Court noted that "[i]t did not say more or less." The plat's limitation was taken to show that the patent conveyed only 29.50 acres, which ended at the lake's edge and thus could not include any outside land. Also, in *Scott v. Lattig, supra,* at 240, the fractional sections were described as containing a specified number of acres from which the disputed island was excepted.

Here, the patent and accompanying plat granted appellee's predecessor an exact number of acres in Lots 5 and 8. This evidence is highly persuasive in determining whether the islands were intended to be conveyed therewith.[5]

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[4] **See also United States v. Boyd, supra.** The Court in **First Nat'l. Bank of Decatur, Neb. v. United States,** 59 F.2d 367 (CA 8 1932). referring to plat and survey incorporation into the patent, held that "[t]he government survey creates and does not merely identify sections, subdivisions, and boundaries, and this survey,. the government plat, and the government patent are not open to challenge by collateral attack." [Citing **Russell v. Maxwell Land Grant Co.,** 158 U.S. 253 (1895), and **Cragin v. Powell,** 128 U.S. 691 (1888)].

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[5] "Each section or subdivision of section, the contents whereof have been returned by the surveyor-general, shall be held and considered the exact quantity expressed in such return. . . ." U.S. Rev. Stat. § 2396 (3) (2d ed.).

In summary, there are a number of legal principles and the admitted facts which we must take into consideration in determining the disputed shoreline boundary in the present case—the placement of the meander line and any attendant circumstances showing it to be intended as the strict boundary, the precise description of the land in the surveyor's field notes and the plat, and the exact acreage allotment listed. We emphasize again the need to view the factual circumstances *in their totality*. Having stated these controlling rules, we evaluate the district court's factual findings.

THE STANDARD OF REVIEW

As in reviewing any district court's factual findings, we recognize our obligation to view the record in the light most favorable to appellee. *W. S. Shamban & Co. v. Commerce & Industry Ins. Co.*, 475 F.2d 34 (CA9 1973). We are, of course, guided by the "clearly erroneous" standard of Rule 52 (a), FRCivP, as construed in *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948), where it is said:

> "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court *on the entire evidence* is left with the definite and firm conviction that a mistake has been committed." [Emphasis supplied.]

See also *County of Ventura v. Blackburn*, 362 F.2d 515 (CA9 1966).

We may regard a finding as clearly erroneous not only if it is without adequate evidentiary support, but

also if it was induced by an erroneous view of the law. *United States v. Singer Mfg. Co.*, 374 U.S. 174, 194-95 n. 9 (1963); *Rowe v. General Motors Corp.*, 457 F.2d 348 (CA5 1972). Therefore, if we conclude that the district court derived its factual findings and ultimate conclusions of law from the application of improper legal standards to the facts, we must reverse. Specifically, this must occur here if it is apparent that the district court ignored or gave insufficient weight to the important rules and factors detailed above for settling fractional boundary disputes. Also, we naturally must reverse if the admitted facts are overlooked or misinterpreted.

ANALYSIS OF THE DISTRICT COURT'S FINDINGS OF FACT

We must take immediate issue with the district court's finding (Number 8) that "[t]he meander line of the Snake River in 1893, at the time of the survey of Lots 5 and 8 was on the west boundary of the subject lands." The surveyor's field notes give sufficient detail of the meander line of Lots 5 and 8 to place it clearly to the east of any islands in the river at that point. The notes, proceeding south to north, speak of crossing the falls of Sand Creek, then bearing *east*, reaching a rocky point, and finally crossing *another* branch of Sand Creek. Aerial photographs and plats in evidence clearly indicate that the south branch of Sand Creek exits from Section 17 at a point directly across from the middle of the largest of the three islands, Lot 9. The plat, based on the 1893 field notes, clearly shows that south branch of Sand Creek entering the Snake at the approximate

center of Lot 5. This confluence would be directly east of the approximate center of the large island now known as Lot 9. The north fork of Sand Creek flows into the the river at a point to the north of Lot 9 at a narrowing of the river. When these facts are considered, along with the undisputed fact that the islands were in existence in 1893, it can only be concluded that the original survey placed the meander line along the bank to the east of the islands. These facts alone demonstrate that the trial judge was clearly erroneous in his finding that the channel of the Snake River in 1893 was to the west of the subject islands and that the meander line of the Snake River at that time was on the west boundary of the islands. To find otherwise would have Sand Creek's south fork intersecting Lot 9 and flowing into the river on the west side of the island. Such a finding would nullify the undisputed facts before us.

Having established the proper placement of the meander line, the task remains of assessing its factual significance in relation to the omitted islands. We commence by noting again that there is no evidence of fraud in the surveyor's failure to note the islands' existence. He did describe a much smaller island west of the meander line in Section 20, but why did he fail to do so in Section 17? He placed a large island-like piece of land in Section 8 squarely east of the right bank's meander line, but why did he not do likewise in Section 17? In all probability, he intended to return and survey the islands at a later date. Here, we must consider the "special circumstances" discussed above in *Niles v. Cedar Point Club*, *Scott v. Lattig*, and *United States v. Lane*.

On first impression, one might excuse the islands' omission due to their relative smallness. However, the small island south in Section 20—less than five acres in size—was included in the survey, while the three disputed islands—with the largest being almost nine acres—were excluded. The inconsistency is apparent. The surveyor could hardly have considered them too small. Accordingly, we find the islands' relative overall size to be that which might call for their exclusion from the boundary of Section 17 and their reservation for a later survey. *Scott v. Lattig, supra,* at 241-42. While not determinative in itself, this is a major factor which must be considered.

Lane, supra, at 664, also speaks of the omitted land's locality, remoteness, and value as additional factors, along with the existence of any difficulties out of proportion to any possible gains in surveying, as factors which might excuse the island's survey while including them within the fractional lots. These factors do not appear to be applicable here. At the time of the survey, as mentioned in the field notes, the areas along the river were already being settled including Section 17 by Polina Lewis and others. By appellee's own admission, the islands were continuously used for agricultural purposes, principally as grazing land, even at the time of the 1893 survey, so they could hardly have been of such slight value as to be taken for granted. There is no evidence to indicate that the islands were so wild, remote, and dangerous that the surveyor intended implicitly to include them within Lots 5 and 8 without even mentioning them, much less surveying them.

We must also recognize the precise description of Section 17 contained in the plat, realizing the importance of the plat and its field notes in limiting the amount of the patent. *Jeems Bayou Club v. United States, supra; United States v. Boyd, supra.* Physically, the plat is persuasive in showing a noticeable widening of the river at the exact spot where the island *should* be, and a clearly defined meander line to what *would* be their east. Again, the contrast with the small island included in Section 20 is apparent. Mathematically, the plat is persuasive in precisely limiting Lots 5 and 8 to 16.80 and 33.60 acres respectively, computations which coincide with the latest approximation of their sizes. The three islands, now estimated to be 11.12 acres *in toto,* were clearly present in 1893, but obviously could not have been part of the previously delimited 16.80 and 33.60 acres in Lots 5 and 8. The patent conveyed a set number of acres—no more and no less.

The district court placed great reliance upon expert testimony concerning the manner in which the islands were formed. The court concluded that the islands were once morphologically attached to the bank as a peninsula, which gradually became dissected from the bank through the action of the "copious springs flowing from the adjacent basalt cliffs." This may be true, but it is irrelevant in the face of the uncontroverted evidence that the islands did, in fact, exist at the time of the 1893 survey. How they came into existence and how long before 1893 does not overcome the fact that in that year they were fully separated from the river bank and west of the meander line on the east side of the Snake.

CONCLUSION

Considering all the above circumstances in their totality and viewing the record as a whole, we are led to the conclusion that the district court was clearly erroneous in its finding of fact that the islands were intended to be included in the patents conveying Lots 5 and 8. The district court also erred in its conclusion of law that the patent, through mesne conveyances, conveyed the islands to appellee. Title to the islands was and remains in the United States.

It follows that the district court also erred in concluding that this is an action to restrain appellants from interfering with appellee's use and possession of lands patented and lawfully conveyed to him, over which it would have jursidiction.

The decision of the Secretary of the Interior under the Color of Title Act is affirmed. The judgment of the district court is reversed and appellee's action for an injunction is dismissed.

IT IS SO ORDERED.

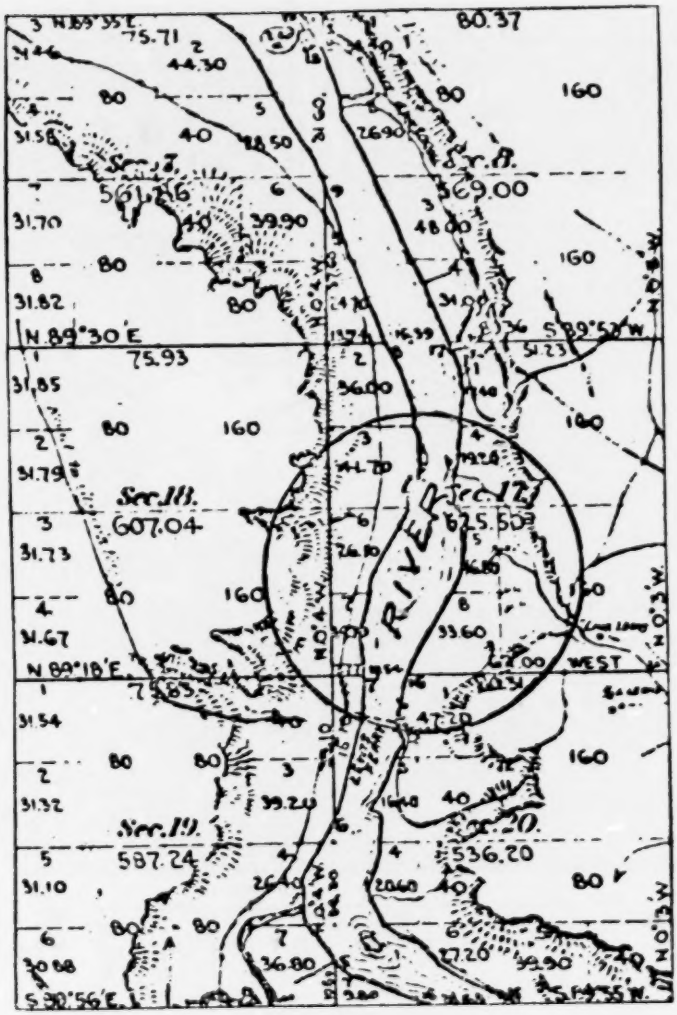

Diagram A
[Plat of 1895]

[Circle denotes area of disputed islands.]

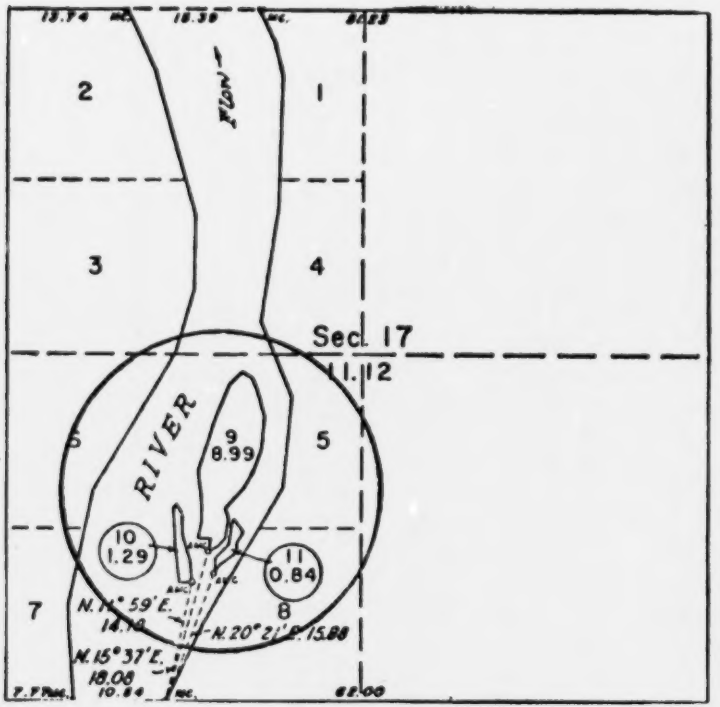

Diagram B
[Plat of 1959]

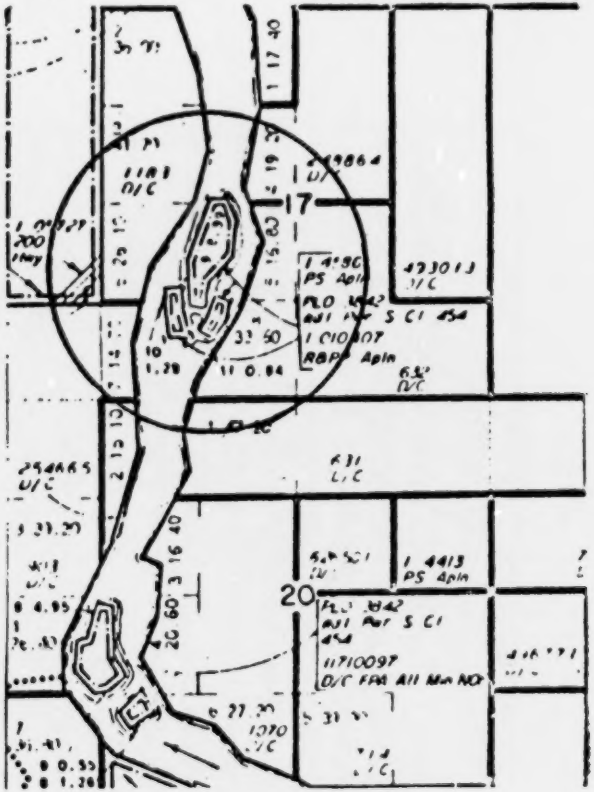

Diagram C
[Plat current to 1971]

[Circle denotes area of disputed islands.]

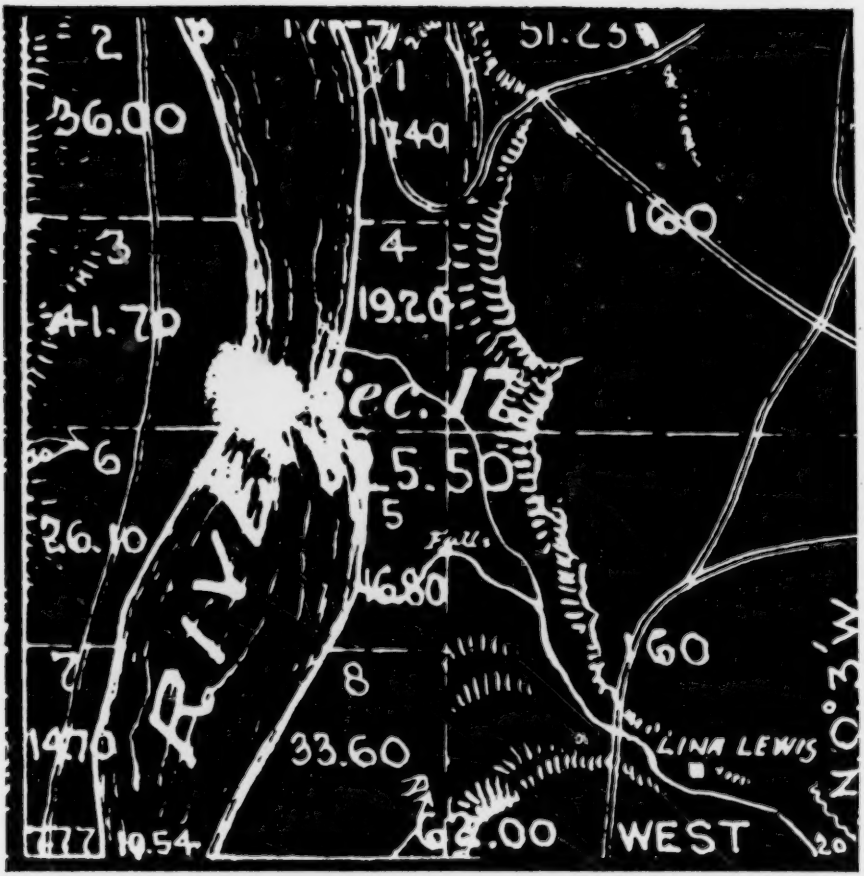

Diagram A-1
[Enlargement of Section 17 showing confluence of Sand (Springs) Creek and Snake River, 1895 Plat]

APPENDIX B

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT OF THE UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

WILLIS W. RITTER, *Plaintiff,* v. ROGERS C. B. MORTON, Secretary of the Department of the Interior, WILLIAM L. MATHEWS, Idaho State Director, Bureau of Land Management, and RICHARD H. PETRIE, successor to ORVAL G. HADLEY, Manager, Idaho Land Office, Bureau of Land Management, *Defendants.*	Civil No. 1-70-74 JUDGMENT and DECREE

This case was heard by the Court, sitting without a jury. Oral and documentary evidence was admitted and briefs filed. The Court having considered the evidence, the briefs and the argument of counsel, and having entered its Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that defendants, Rogers C. B. Morton, Secretary of the Interior, William L. Mathews,

Idaho State Director of the Bureau of Land Management, and Richard H. Petrie, successor to Orval G. Hadley, Manager, Idaho Land Office, Bureau of Land Management, their agents, servants and employees, and all persons in active concert and participation with them, are acting unlawfully and unconstitutionally in an attempt to deprive plaintiff of the use and possession of his lands, more particularly described as Lots 9, 10 and 11, Township 8 South, Range 14 East, Boise Meridian, and that such defendants, their agents, servants and employees, and all persons in active concert and participation with them should be and hereby are permanently enjoined from any attempt to intermeddle with said lands to seize them, to sell or convey them, or in any manner whatsoever to interfere with the peaceable possession and enjoyment of said lands by the plaintiff, Willis W. Ritter, his heirs, assigns and successors in interest.

/s/ Ray McNichols

Chief Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

WILLIS W. RITTER, *Plaintiff,* v. ROGERS C. B. MORTON, Secretary of the Department of the Interior, WILLIAM L. MATHEWS, Idaho State Director, Bureau of Land Management, and RICHARD H. PETRIE, successor to ORVAL G. HADLEY, Manager, Idaho Land Office, Bureau of Land Management, *Defendants.*	Civil No. 1-70-74

This case was heard by the Court, sitting without a jury. Oral and documentary evidence was admitted and pretrial and post-trial briefs submitted. The matter stands ready for final determination on the merits. The Court, after a consideration of all of the evidence and a fuller view of the applicable law, makes the following Findings of Fact and Conclusions of Law.

PRELIMINARY STATEMENT

This is an action seeking to settle disputed rights regarding certain real property located in the State of Idaho. In Count I of his complaint, plaintiff seeks by review of agency action to have the Court determine

that the plaintiff was the owner of the property involved under the provisions of the Color of Title Act. The second and third Counts seek to restrain the Secretary and his agents from interfering with the plaintiff's title and possession of the lands which title is being claimed by way of patent from the United States of America, and mesne conveyances to the plaintiff.

FINDINGS OF FACT

1. In August, 1893, Township 8 South, Range 14 East of the Boise Meridian, was surveyed, and the plat of survey was approved by the Surveyor General for Idaho on May 18, 1895. Lots 5 and 8 of Section 17 therein were described, containing 16.80 and 33.60 acres, respectively. The field notes and survey plat described the western boundary of Lots 5 and 8, Section 17, as the meander line of the Snake River.

2. On February 26, 1896, the United States issued a patent to Lots 5 and 8. Through mesne conveyances, plaintiff is the present owner of Lots 5 and 8.

3. The lands in dispute in this litigation (referred to herein as the "subject lands"), are sometimes described as three small islands lying adjacent on the west to Lots 5 and 8. These lands were first included in a survey made by the United States in 1955 and are in that survey described as Lots 9, 10 and 11 of said Section 17, and contain 8.99 acres, 1.29 acres, and 0.84 acres, respectively.

4. No reference was made in the 1893 survey to

the subject lands, they not being mentioned in the surveyor's field notes nor in the plat of the survey.

5. Plaintiff's predecessors in interest have used the subject lands for various purposes, including the raising of crops and grazing of livestock. At various times fences have been errected and irrigation facilities installed. Such use has been exclusive to the respective owners of Lots 5 and 8.

6. The witness, Dr. Eardley, a well qualified expert, testified at length regarding the formation of the lands in the Snake River Valley in the area of the subject properties. The evidence of Dr. Eardley is undisputed in the record and was very persuasive to the Court. The subject lands, according to Dr. Eardley, constitute a flood plain of the Snake River which plain was built during flood stages by the deposit of layer upon layer of silt and very fine sand which are the common sediments that the Snake River has carried. During flood stages the river overflowed the banks of its channels and floods over the valley bottom. The bottom of the flow slowly decreased and the silt and sand particles settled down in a layer of flood plain silt and sand was deposited. Dr. Eardley was of the opinion that channels cutting across Lots 5 and 8 resulted from the copious springs flowing from the adjacent basalt cliffs which have converged into waterways across the flood plain and the flood plain has been cut in such a manner that certain remnants such as the subject properties have been partially dissected from the mainland.

7. I find that the subject lands once formed a peninsula which was connected with the mainland, now Lots 5 and 8. The subsequent separation of the subject lands from Lots 5 and 8 was due to the flow of Sand Springs Creek and not the action of the Snake River.

8. The channel of the Snake River in 1893 was to the west of the subject lands and the high and low marks of the Snake River are to the west of the subject lands. The meander line of the Snake River in 1893, at the time of the survey of Lots 5 and 8 was on the west boundary of the subject lands.

9. There was no gross error or fraud in connection with the survey of 1893.

10. The plaintiff has claimed ownership and possession of the subject lands and has raised crops thereon since he acquired a deed to Lots 5 and 8, on July 10, 1954.

11. In February of 1970, the Land Office Manager, Bureau of Land Management, Department of the Interior, purported to approve a transfer of the subject lands to the State of Idaho, Department of Fish and Game. In July of 1970, the officers of the Bureau of Land Management took steps to require the plaintiff to cease and desist the use of subject lands and directed that he remove any crops or improvements thereon by September of 1970. Plaintiff began this suit.

CONCLUSIONS OF LAW

1. This is an action to restrain the defendants from interfering with the plaintiff's use and possession of lands patented and lawfully conveyed to him. The Court has jurisdiction.

2. This action is not barred by the doctrine of sovereign immunity.

3. The subject lands are east of the water course of the Snake River which constitutes the actual boundary of the land conveyed by the patent and the lands are therefore included in the patent. Plaintiff is the owner of the subject properties by way of patent from the United States.

4. Plaintiff is entitled to the relief sought under Counts II and III.

5. The Court having found and concluded in connection with Counts II and III that plaintiff has title to Lots 9, 10 and 11, and having determined that the defendants should be enjoined from interfering with that title, it is unnecessary to determine the issues raised by Count I of of the Complaint.

/s/ Ray McNichols

Chief Judge

APPENDIX C

DECISION OF DEPARTMENT OF INTERIOR

NOVEMBER 14, 1960

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Land Office
P. O. Box 2237
Boise, Idaho

DECISION

Willis W .Ritter — Color of Title

Application Rejected

A class 1 color-of-title application for the following lands was submitted by Willis W. Ritter on June 24, 1959:

T. 8 S., 14 E.

Sec. 17: Lots 9, 10, 11

By decision dated March 16, 1960, the applicant was required to submit photostat copies of deeds or abstract of title showing the conveyance of title of the lands to the applicant for 20 consecutive years. On April 14, 1960, photostat copies of instruments of conveyance appearing in the Gooding county records, together with a photostat copy of a warranty deed and the original of an affidavit were filed.

The lands applied for are islands in the Snake River which were erroneously omitted from the original survey. These and other islands in the area were surveyed in 1955, in response to two applications for the survey.

The photostat copies of instruments of conveyance show that a patent from the United States was issued to a Polina Lewis on February 25, 1896, for Lots 5, 8, $SE\frac{1}{4}SE\frac{1}{4}$, $W\frac{1}{2}SE\frac{1}{4}$ of Section 17, T. 8 S., R. 14 E. containing 170.40 acres. Lots 5 and 8 are adjacent to the lots applied for. Another patent was issued for adjoining lands in Sec. 20 and 21; however, since these adjoining lands do not have direct bearing on the matter of a claim or color of title of the subject islands there is no reason to further describe them.

On September 12, 1902, the patented lands in Section 17, described above, were conveyed to James S. and William A. Johnson by the following metes and bounds description:

> "A certain tract of land described as follows to wit: Bounded on the South by section line running East and West between Secs. 17 and 20. On the west by Snake River — On the North by the half Sec. line running east and west through center of Section 17 — On the East by the main wall rock said tract of land containing about 40 acres and fractions thereof more or less the same being situated in Lots 5 and 8, Sec. 17, T. 8 S., R. 14 E., B.M."

The remaining instruments of conveyance shows that the above described tract or parcel of land in Lots 5 and 8 was eventually conveyed to the applicant, to-

gether with other lands, through a series of different owners. According to the original survey Lot 5 contains 16.80 acres and Lot 8 contains 33.60 acres for a total of 50.40 acres. The applicant now owns 40 acres more or less of these lots.

The deeds specify that the west boundary of the 40 acre tract is the Snake River. This description, cited above, has not varied since the tract was so deeded to the Johnsons on September 12, 1902. There is no mention, whatsoever, of any islands or other lands which were not part of the original survey.

A claim of class 1 is one which has been held in good faith and in peaceful, adverse possession by a claimant, his ancestors or grantors, under claim or color of title for more than 20 years, on which valuable improvements have been placed, or on which some part of the land has been reduced to cultivation. The purpose and intent of the color-of-title act is to provide a legal method whereby a valid title to a tract of public land may be acquired by a citizen, who, relying in good faith upon a title or claim of title derived from some source other than the government, has been in peaceful adverse possession of the tract for the prescribed period. *Ralph Findlay*, A-23522 (February 23, 1943). The basic element of the claim to the public land must be his possession of it under a color-of-title from a source other than the United States. *John Johnson*, A-25695 (December 30, 1959). The mere possession of and claim to public land, and the placing of improvements on the land or cultivating the land are not enough in the

absence of color-of-title required by the statue. Occupation of the land must be founded on some reasonable basis of belief that the land was held in good faith under a valid claim *Marion M. Pontius*, A-27473 (November 7, 1957).

The occupancy and use of the islands under a mistaken belief that it comprised a part of the lands purchased does not entitle the applicant to purchase the land under the Color of Title Act. *Ephraim R. Nelson*, A-25865, (June 6, 1950); *Hazel W. Baley*, A-25793 (February 2, 1950); *John Johnson*, A-25695, (December 30, 1959).

The conveyances of title submitted fail to show that any conveyance of the subject islands has ever been made to the applicant or his predecessors in interest. The instruments show that he owns adjacent lands only. A claim or color of title must be established by a deed or other instrument which purports to pass title and which appears to be title to the land, but is not good title. The applicant shows the title passed to the patented lands but no mention of the subject islands was made at all. An affidavit from the previous owner of the lands now owned by the applicant states that she had the understanding that the islands were an incidence to the acquisition and ownership of the purchased lands. However, as pointed out previously, this is no basis for a claim or color of title under the Color-of-Title Act. No deed or instrument has been submitted which would even so indicate.

The applicant has not submitted any evidence on

which a claim or color-of-title can be based. Therefore, the subject application is hereby rejected for the reasons enumerated above.

This decision becomes final 30 days from its receipt unless an appeal to the Director, Bureau of Land Management, is filed. If an appeal is taken, there must be strict compliance with the regulation in 43 CFR, Part 221. (*See enclosed form* 4-1364). A filing fee of $5.00 will be required.

Donald I. Bailey
Manager

APPENDIX D

DECISION OF THE DEPARTMENT OF INTERIOR

August 7, 1961

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Washington 25, D.C.

August 7, 1961

Certified Mail
Return Receipt Requested

DECISION

Myrtle A. Freer
Andrew J. Freer, Jr. — Color of Title
Willis W. Ritter
John E. Gurley

Decisions Affirmed

The above-named appellants have appealed from separate decisions[1] rejecting their respective applications to purchase tracts under the Color of Title Act, as amended (43 U.S.C. 1958 ed., 1068 et seq.). The applications were rejected on the basis that the applicants were not misled as to the nature of the grantor's claim to the land by the deeds which were claimed to initiate

[1] The decision relating to the Michigan cases is dated December 2, 1960, and the decisions relating to the Idaho and Nevada cases are dated November 14 and July 28, 1960, respectively.

the color of title, or that the applicants have not submitted evidence of any written instrument purporting to convey title to the lands 20 or more years previously.

While Mrs. Freer and her husband were occupying certain public land, a local court in 1938 determined that Mr. Freer, Sr., qualified as a resident of Millen township for the purpose of serving in the office of township supervisor by reason of the years he had lived on the land in issue. Mr. and Mrs. Freer, Sr., misconstrued this court decree to be a determination that Mr. Freer, Sr., was the owner of the land in issue, so in 1938 he deeded the portion Mrs. Freer now seeks to purchase to her and in 1945 he deeded the portion their son, Andrew J .Freer, Jr., seeks to him. Thus, the Freers' claims of color of title are based on the fact that they misconstrued the law, not that they were misled by the terms of the mentioned deeds of conveyance or court decree. Moreover, Mr. Freer, Jr., has not held the land 20 years since the execution of the deed naming him grantee.

Judge Ritter, as the owner of nearby mainland, believed that he was the riparian owner of certain islands in issue, and he occupied the lands under this belief. The Department has determined that the islands were in existence prior to the admission of the State of Idaho into the Union, so the islands are public land. See *Willis W. Ritter*, A-27755 December 22, 1958). Thus, in effect, the appellant asserts that his belief that he was the riparian owner of the islands, and his occupancy of the lands under this belief, is sufficient to give him a preference right of purchase under the Color of Title

Act, *supra*, even though he has no instrument which purports to convey title to the public lands to him or his predecessors in interest.

Mr. Gurley purchased land adjoining the public land he seeks under the belief that the land description in his deed included the public land in issue. Thus, Mr. Gurley's mistake was one as to the boundaries of his land, and his claim is not based upon any written instrument which purports to convey title to the public land in issue.

The accepted weight of authority in the absence of statute is that color of title can be founded only upon an instrument in writing. *Peterson v. Weber County*, 103 P. 2d 652, 655; 99 Utah 281 (1939). The purpose of the Color of Title Act, *supra*, is to provide a legal method whereby one who, relying in good faith upon a title or claim of title derived from some source other than the Government, has been in peaceful, adverse possession of a tract of public land for the period prescribed by the statute, and who meets the other requirements of statute and regulation, may acquire a valid title to the land. See Vol. 2, 1953 U.S. Code Cong. and Adm. News, page 2014 *et seq.* The mere occupancy of the land, or occupancy under a claim of title which the claimants knew or had good reason to believe was invalid, is not sufficient, even when the other requirements of the act may have been complied with. *Jose C. Crespin v. Thelma D. Sloan*, A-25520 (November 16, 1949). The appellants have offered no showing which would support a finding that they or their predecessors had

reason to believe they had title to such land derived from a source other than the Government.

Accordingly, the decisions are affirmed.

Mrs. Myrtle A. Freer, Mr. Andrew J. Freer, Jr., Judge Willis W. Ritter and Mr. John E. Gurley are each allowed the right of appeal to the Secretary of the Interior in accordance with the regulations in 43 CFR Part 221, as amended. See enclosed Form 4-1365. If an appeal is taken, the amount of the filing fee will be computed on the basis of $5.00 for *each* color of title application included in the appeal. If each appellant adversely affected by this decision appeals, the total filing fee is $20.00. In taking an appeal there must be strict compliance with the regulations.

/s/ John B. Piccolo
Acting Chief,
Division of Appeals

Enclosure

DISTRIBUTION

Mr. Glenn C. Hague, Attorney for Mrs. Freer and Mr. Freer, Jr. (Certified Mail)

Mrs. Myrtle A. Freer (Regular Mail)

Mr. Andrew J. Freer, Jr. (Regular Mail)

Senior & Senior, Attorneys for Judge Ritter (Certified Mail)

Hon. Willis W. Ritter (Regular Mail)

Mr. Glenn B. Gurley, Attorney in fact for Mr. John E. Gurley (Certified Mail)

Mr. John E. Gurley (Regular Mail)

Chief, Div. of Field Services

SD (Idaho)

SD (Nevada)

Land Office, St. Paul, Minnesota

LO (Boise)

LO (Reno)

Chief, Div. of Lands and Recreation

Each Case File

Permanent File

Attorneys' Reading File

Appeals Reading File

JHO'D

APPENDIX E

DECISION OF DEPARTMENT OF INTERIOR

April 2, 1963

UNITED STATES
DEPARTMENT OF THE INTERIOR

OFFICE OF SECRETARY

Washington 25, D.C.

A-29221

Myrtle A. Freer	BLM 051854 (Michigan)
Andrew J. Freer, Jr.	BLM 051863 (Michigan)
Willis W .Ritter	Idaho 010584

Color of title applications rejected

Affirmed

APPEALS FROM THE BUREAU OF LAND MANAGEMENT

Myrtle A. Freer, Andrew J. Freer, Jr., and Willis W. Ritter have separately appealed to the Secretary of the Interior from a decision dated August 7, 1961, whereby the Division of Appeals, Bureau of Land Management, affirmed land office decisions rejecting their respective applications to purchase tracts under the Color of Title Act, as amended (43 U.S.C., 1958 ed., sec. 1068 *et seq.*).

The applications were filed as class 1 claims under the act. Class 1 claims are allowable only where it is

shown to the satisfaction of the Secretary of the Interior

> "that a tract of public land has been held in good faith and in peaceful, adverse, possession by a claimant, his ancestors or grantors, under claim or color of title for more than twenty years, and that valuable improvements have been placed on such land or some part thereof has been reduced to cultivation * * *." 43 U.S.C., 1958 ed., sec. 1068.

The claim of Mrs. Freer originated in a deed issued on March 20, 1936, by her husband, Andrew J. Freer, Sr., purporting to convey a two-thirds interest in a certain island to her. Andrew J. Freer, Jr.'s, claim originated in a deed issued on October 30, 1945, by his father, Andrew J. Freer, Sr., purporting to convey a one-third interest in the same island to him. There is evidence that Mrs. Freer and her husband did build a house and reside on the island as early as 1917. There is, however, no evidence at all of any purported conveyance of the island to Andrew J. Freer, Sr. In fact, there is not even an assertion that prior to the conveyances made by him he thought he owned the island, or any explanation as to why he might have thought he owned the island. Clearly, therefore, a basic requirement of the color of title act, that the claimant must have possessed the land under claim or color of title, is completely lacking so far as Freer, Sr., is concerned. *Marion M. Pontius*, A-27473 (November 7, 1957). Mrs. Freer and Freer, Jr., acquired color of title in 1936 and 1945, respectively, but Mrs. Freer was cognizant in 1954 that she did not have title to the land.

Andrew J. Freer, Jr., was also aware in 1954 that he did not have title to the land. Their holding of the land thereafter cannot be said to have been in good faith under claim or color of title, *Marion F. Pontius, supra,* and their holding prior thereto was not for the required twenty years. The Freer color of title applications were therefore properly rejected.

Appellant Ritter's application is for three islands in the Snake River, Idaho, surveyed as lots 9, 10, and 11, sec. 17, T. 8 S., R. 14 E., B.M., Idaho, in response to applications for survey filed in April 1955. The appellant's application is based upon his and his predecessors' ownership of land on the east bank of the Snake River lying opposite the islands (lots 5 and 8, sec. 17). Lots 5 and 8 were patented by the United States on February 25, 1896. On September 12, 1902, the lots were included in a conveyance which described the lands conveyed by metes and bounds, the west boundary being described as the Snake River. This description did not vary in subsequent conveyances, including the final one to appellant executed on July 10, 1954. Appellant concedes that in the chain of title commencing with the patent from the United States there is no reference to any islands in the river.

The Bureau rejected Judge Ritter's application on the ground that neither he nor his predecessors had any color of title to the islands, there being no instrument in writing purporting to include the islands.

On this appeal Judge Ritter contends vigorously that he and his predecessors had color of title to the

islands by virtue of the patent from the United States and the subsequent conveyances. His contention is based on the argument that until 1915 the Idaho law was that a riparian owner takes title to the thread of the stream, including all small islands, whether the stream is navigable or non-navigable and that the Idaho law is still the same as to nonnavigable streams. He concludes that the patent and conveyances must be read in light of the Idaho law in existence at the time and that, so read, they constitute color of title to the islands.

It is unnecessary to determine here whether a general interpretation of law as to the effect of a conveyance satisfies the statutory requirement for a showing of a color of title. Assuming that it does, it would not help the appellant here. The patent from the United States to lots 5 and 8, section 17, was issued on February 25, 1896. The first decision by the Idaho Supreme Court holding that a patentee of riparian land gained title to an island lying between his land and the thread of the stream was *Johnson v. Johnson*, 95 Pac. 499, decided March 23, 1908. The case was one of first impression (see page 503). It is hard to see how the patent issued in 1896 and the conveyance made in 1902 could be said to have been made with this ruling in mind.

But this does not matter. Assuming that they were, the fact is that on February 6, 1915, the Idaho court in *Callahan v. Price*, 146 Pac. 732, cited by appellant, overruled *Johnson v. Johnson* and held that a riparian owner did not gain title to an island lying between his riparian land and the thread of a navigable stream. This ruling came down shortly before the lapse of 19 years

after issuance of the patent. Thereafter, appellant's predecessor then holding title to lots 5 and 8 had no basis for believing that his ownership of those lots entitled him to ownership of the three islands lying opposite them. In other words, there could be no good faith holding of the islands under claim or color of title subsequent to February 6, 1915. And, since any previous good faith holding in reliance upon the prior interpretation of Idaho law was far less than 20 years, a basic requirement of the color of title law has not been and cannot be fulfilled.

The appellant has not addressed himself to this point. He has, however, said that the navigability of the Snake River has never been determined at this point where the three islands are located. He has also said that *Callahan v. Price* did not change the Idaho law as to nonnavigable streams. However, in *Willis W. Ritter et al.*, A-27755 (December 22, 1958), in which the Department affirmed the dismissal of his protest against the survey of the same three islands, the Department accepted determinations by the courts and this Department that the Snake River is navigable. Among other decisions, the Department cited *Johnson v. Johnson, supra*, in which the Idaho court was concerned with the ownership of an island in the Snake River perhaps five miles or so from the three islands in question. Discussing the question of what constitutes a navigable river, the court concluded that the Snake River is a navigable stream . 95 Pac. at 507. As was the case in 1958, we see no reason to hold that the river is not navigable where the three islands are located. Therefore, we would be

unable to accept any contention that the river is non-navigable where the islands are located and that the appellant and his predecessors continued to have color of title despite *Callahan v. Price*.

Callahan v. Price was the result of the decision of the United States Supreme Court in *Scott v. Lattig*, 227 U.S. 229 (1913), which reversed a decision of the Idaho court following the rule in *Johnson v. Johnson*. The United States Supreme Court held that an island in the Snake River which was in existence at the time Idaho was admitted to the Union but which had not been surveyed did not pass with a patent to land on the bank of the river and remained public land of the United States. Appellant argues that the islands involved in *Scott v. Lattig* and in *Callahan v. Price* are much different from the three islands involved here from the standpoint of size and their separation from the shore. If the distinction is sound, the only legal significance of it would be that it would be necessary to conclude that title to the three islands passed from the United States with the issuance of the patent to lots 5 and 8 in 1896, and we would be left with no color of title case at all. So, too, is the effect of appellant's argument that until *Callahan v. Price*, his predecessors actually had legal title to the islands. In any event, in the Department's decision of December 22, 1958, dismissing appellant's protest against the survey of the islands, the Department held that title of the islands is in the United States. The appellant cannot attack that conclusion and still maintain his application.

It is unnecessary to discuss at length appellant's contention that the color of title act does not require a claimant to have color of title in all cases but permits him to comply if he has merely "claim of title" as distinguished from "color of title". In this case, any claim of title that the appellant and his predecessors have rests upon the interpretation of Idaho law prior to *Callahan v. Price*. Such claim of title could not have been held in good faith after that decision was issued.

Therefore, pursuant to the authority delegated to the Solicitor by the Secretary of the Interior (sec. 210. 2.2A(4)(a), Departmental Manual; 24 F.R. 1348), the decision appealed from is affirmed.

Ernest F. Hom
Assistant Solicitor
Land Appeals

APPENDIX F

SURVEY OF PUBLIC LANDS

43 USCA §752

§752. Boundaries and contents of public lands; how ascertained

The boundaries and contents of the several sections, half-sections, and quarter-sections of the public lands shall be ascertained in conformity with the following principles:

First. All the corners marked in the surveys, returned by the Secretary of the Interior or such agency as he may designate, shall be established as the proper corners of sections, or subdivisions of sections, which they were intended to designate; and the corners of half- and quarter-sections, not marked on the surveys, shall be placed as nearly as possible equidistant from two corners which stand on the same line.

Second. The boundary lines, actually run and marked in the surveys returned by the Secretary of the Interior or such agency as he may designate, shall be established as the proper boundary lines of the sections, or subdivisions, for which they were intended, and the length of such lines, as returned, shall be held and considered as the true length thereof. And the boundary lines which have not been actually run and marked shall be ascertained, by running straight lines from the established corners to the opposite corresponding corners; but in those portions of the fractional townships where

no such opposite corresponding corners have been or can be fixed, the boundary lines shall be ascertained by running from the established corners due north and south or east and west lines, as the case may be, to the watercourse, Indian boundary line, or other external boundary of such fractional township.

Third. Each section or subdivision of section, the contents whereof have been returned by the Secretary of the Interior or such agency as he may designate, shall be held and considered as containing the exact quantity expressed in such return; and the half sections and quarter sections, the contents whereof shall not have been thus returned, shall be held and considered as containing the one-half or the one-fourth part, respectively, of the returned contents of the section of which they may make part. R.S. § 2396; Mar. 3, 1925, c. 462, 43 Stat. 1144 ;1946 Reorg. Plan No. 3, § 403, eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1100.

APPENDIX G

LANDS HELD UNDER COLOR OF TITLE

43 USCA §1068

Sec.

1068. Lands held in adverse possession; issuance of patent; reservation of minerals; conflicting claims.

1068a. Appraisal.

1068b. Mineral reservation.

§1068. Lands held in adverse possession; issuance of patent; reservation of minerals; conflicting claims

The Secretary of the Interior (a) shall, whenever it shall be shown to his satisfaction that a tract of public land has been held in good faith and in peaceful, adverse, possession by a claimant, his ancestors or grantors, under claim or color of title for more than twenty years, and that valuable improvements have been placed on such land or some part thereof has been reduced to cultivation, or (b) may, in his discretion, whenever it shall be shown to his satisfaction that a tract of public land has been held in good faith and in peaceful, adverse, possession by a claimant, his ancestors or grantors, under claim or color of title for the period commencing not later than January 1, 1901, to the date of application during which time they have paid taxes levied on the land by State and local governmental units, issue a patent for not to exceed one hundred and sixty acres of such land

upon the payment of not less than $1.25 per acre: *Provided*, That where the area so held is in excess of one hundred and sixty acres the Secretary may determine what particular subdivisions, not exceeding one hundred and sixty acres, may be patented hereunder: *Provided further*, That coal and all other minerals contained therein are hereby reserved to the United States; that said coal and other minerals shall be subject to sale or disposal by the United States under applicable leasing and mineral land laws, and permittees, lessees, or grantees of the United States shall have the right to enter upon said lands for the purpose of prospecting for and mining such deposits: *And provided further*, That no patent shall issue under the provisions of this chapter for any tract to which there is a conflicting claim adverse to that of the applicant, unless and until such claim shall have been finally adjudicated in favor of such applicant. Dec. 22, 1928, c. 47, § 1, 45 Stat. 1069; July 28, 1953, c. 254, § 1, 67 Stat. 227.

§1068a. Appraisal

Upon the filing of an application to purchase any lands subject to the operation of this chapter, together with the required proof, the Secretary of the Interior shall cause the lands described in said application to be appraised, said appraisal to be on the basis of the value of such lands at the date of appraisal, exclusive of any increased value resulting from the development or improvement of the lands by the applicant or his predecessors in interest, and in such appraisal the Secretary shall consider and give full effect to the equities of any such applicant. Dec. 22, 1928, c. 47, § 2, 45 Stat. 1070.

§1068b. Mineral reservation

If the claimant requests that the patent to be issued under this chapter not contain a mineral reservation and if he can establish to the satisfaction of the Secretary that the requirements of this chapter have been complied with by such claimant and his predecessors for the period commencing not later than January 1, 1901, to the date of application, no mineral reservation shall be made unless the lands are, at the time of issuance of the patent, within a mineral withdrawal or subject to an outstanding mineral lease. Dec. 22, 1928, c. 47, § 3, as added July 28, 1953, c. 254, § 2, 67 Stat. 228.

APPENDIX H

United States Department of the Interior

Bureau Of Land Management

Washington, D.C. 20240

May 7, 1975

Memorandum

To: Assistant Director, Technical Services (400)

From: Chief, Division of Cadastral Survey

Subject: Resurveys and Omitted Land Surveys Along the Snake River, Idaho

On May 6, you asked us to supply certain information pertaining to resurvey and omitted land surveys along the Snake River in Idaho. It is our understanding that this information was requested by Judge Willis Ritter, U.S. District Court for the District of Utah, Salt Lake City, Utah.

Background.

Judge Ritter owns upland the Snake River in T. 8 S., R. 14 E., Boise Meridian, Idaho, and in 1959 laid claim to an alleged tract of land fronting his property under the Color of Title Act. This action

was denied by the Secretary of the Interior. Judge Ritter petitioned that the United States be restrained from interfering with his title, use, and possession of the lands in dispute. The U.S. District Court, District of Idaho, ruled in favor of Judge Ritter, and the decision was appealed by the United States. The U.S. Court of Appeals, Ninth Circuit, reversed the District Court's decision and affirmed the decision of the Secretary of the Interior.

Under the Omitted Land Act of 1962, (Public Law 87-469, 76 Stat. 89), an extensive inventory and survey of omitted lands along approximately 150 miles of river bank of the Snake River was initiated. The resurveys and surveys were concentrated in an area between Blackfoot and St. Anthony, because this area had the greatest history of land title problems caused by the existence of omitted land along the river banks. Approximately 16,000 acres of omitted lands were identified in these resurveys. Judge Ritter's claim lies approximately 100 miles downstream from this area.

Definition of Omitted Lands...

Omitted lands are land areas not shown on the plat of original survey, which were excluded from the survey by some gross discrepancy in the location of the meander line of a body of water. The lands typically lie between the actual waterline of a body of water and the original surveyed meander line.

Specifically, we have been asked to provide the following information:

1. *Number of resurveys and omitted land surveys executed by the Bureau along the Snake River, Idaho.*

Between 1959 and 1968, approximately 28 contigous townships along the Snake River were resurveyed, and omitted lands in these townships identified. At the present time, five separate protests have been filed against these surveys by landowners along the river bank. Of the cases that have been heard (3), one has been decided in favor of the protestant (*Burt A. Wackerli, et al. v. Rogers C. B. Morton*, Civil No. 1-66-92, USDC, Idaho). The court ruled that there was insufficient land area involved for it to be considered omitted land. An appeal to the Ninth Circuit Court has been recommended by the Bureau in this case.

2. *Number of individual private land owners involved.*

When the resurveys were completed and omitted land areas identified, approximately 400 parties were notified by the Bureau that omitted lands fronted their lands along the Snake River. Information pertaining to: (1) Number of acres of omitted land classified for retention by the United

States; (2) Number of acres of omitted land classified for sale under the Act of 1962; (3) Number of sales to date; and (4) Amount of money realized from these sales is a function of the Lands Division and is not available in the Division of Cadastral Survey (420).

/s/ BERNARD W. HOSTROP